AO 91 (Rev. 08/09) Criminal Complaint

FILED

UNITED STATES DISTRICT COURT
for the
Northern District of California

MAR 1 9 2010

RICHARD W WIEKING
CLERK. U.S DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

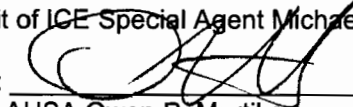|		
United States of America	)	
v.	)	
KENNETH MARTIN KYLE	)	Case No.
	)	
	)	**3 10 7 0 2 1 2**
	)	
Defendant(s)		

EMC

CRIMINAL COMPLAINT

I, the complainant in this case, state that the following is true to the best of my knowledge and belief.

On or about the date(s) of _____ March 15, 2010 _____ in the county of _____ San Francisco _____ in the

Northern District of _____ California _____, the defendant(s) violated:

Code Section	*Offense Description*
18 U.S.C. Section 2252(a)(1)	Transportation of Child Pornography

Penalties: Minimum five to maximum 20 years imprisonment
$250,000 fine
Minimum five years to lifetime supervised release
$100 special assessment

This criminal complaint is based on these facts:

See Attached Affidavit of ICE Special Agent Michael Shan

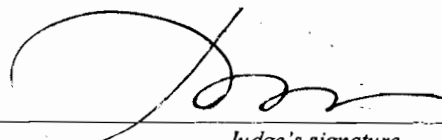Approved as to Form: _____
AUSA Owen P. Martikan

☑ Continued on the attached sheet.

_____
Complainant's signature

Special Agent Michael Shan, ICE, DHS
Printed name and title

Sworn to before me and signed in my presence.

Date: __3/19/10__

_____
Judge's signature

DONNA M. RYU
Hon. Edward M. Chen, U.S. Magistrate Judge
Printed name and title

City and state: _____ San Francisco, California _____

IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

In re: KENNETH MARTIN KYLE

AFFIDAVIT IN SUPPORT OF A CRIMINAL COMPLAINT

I, Michael L. Shan, do swear and affirm as follows:

I.   INTRODUCTION

1.   I am a Special Agent with the United States Department of Homeland

Security (DHS), Immigration and Customs Enforcement (ICE). I am currently assigned

to the Resident Agent in Charge (RAC) group at the San Francisco International Airport.

I have been employed as a Special Agent since August 2009. Prior to becoming a

Special Agent, I worked as an Immigration Enforcement Agent for ICE from July 2006

until August 2009. I completed ICE Detention and Removal Training in November

2006, the Criminal Investigator Training Program in November 2009, and the ICE

Special Agent Training Program in January 2010. All of the training programs were

facilitated at the Federal Law Enforcement Training Center (FLETC) in Brunswick,

Georgia. I have a Bachelor of Science Degree from Portland State University, and I've

completed coursework towards a Master of Business Administration at Golden Gate

University.

2.   In my current capacity, I am responsible for investigating violations of

federal criminal statutes, including cases involving the sexual exploitation of children and

material constituting child pornography. I have received training in techniques for

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investigating violations of Title 18, United States Code, including specifically 18 U.S.C. 2252(a)(1), which prohibits the transportation of child pornography. In the course of the investigation described herein, I have consulted with other federal agents, including ICE agents at the San Francisco International Airport, who have written affidavits for and participated in the application and execution of multiple search and arrest warrants over the course of their careers.

II.   PURPOSE FOR THE AFFIDAVIT

3.   This affidavit is made in support of an arrest warrant against Kenneth Martin KYLE. The statements contained in this affidavit are based on my experience and training as a Special Agent and the information provided to me by other ICE agents, forensic analysts at the ICE Computer Forensics Laboratory, and customs officers with Customs and Border Protection (CBP). Because this affidavit is being submitted for the limited purpose of securing an arrest warrant, I have not included each and every fact known to me concerning this investigation. I have set forth only the facts that I believe are necessary to establish probable cause that KYLE violated Title 18, United States Code, Section 2252(a)(1).

III.   APPLICABLE LAW

4.   Under Title 18, United States Code, Section 2252(a)(1), it is a crime for any person to knowingly transport or ship using any means or facility of interstate or foreign commerce, or in or affecting interstate or foreign commerce, by any means including by computer or mails, any visual depiction, if the producing of such visual depiction involves the use of a minor engaging in sexually explicit conduct.

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IV. FACTS ESTABLISHING PROBABLE CAUSE

5.   KYLE first became known to federal law enforcement in connection with a Federal Bureau of Investigation (FBI) undercover investigation of individuals distributing child pornography images and videos over peer-to-peer file-sharing networks. During this investigation, an FBI agent working in an undercover capacity received over 100 images of child pornography from a user of the file-sharing network, who was later determined to reside at KYLE's address. The FBI passed this lead on to the San Francisco Police Department, who executed a search warrant at KYLE's residence, which is in San Francisco. During execution of the search warrant on March 10, 2010, San Francisco police officers seized several computers and computer peripherals, and learned that KYLE was out of the country.

6.   FBI agents alerted CBP agents that KYLE was suspected of distributing and possessing child pornography, and that he might be returning to the United States in the near future. Based on this information, CBP agents flagged KYLE for a secondary inspection upon his return to the United States.

7.   On the afternoon of March 15, 2010, KYLE arrived at San Francisco International Airport aboard Lufthansa Flight No. 454 from Frankfurt, Germany. CBP officers directed KYLE to a secondary inspection. During this inspection, CBP officers examined KYLE's laptop computer, which is an HP model G60-530US Notebook computer. A CBP officer found several images of child pornography on the laptop. I also examined some of the images, and agreed that they were child pornography. The images included photographs of infants and toddlers being sexually abused by adults. KYLE admitted to CBP officers that the laptop was his.

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8.   CBP officers detained KYLE's laptop, which was later transferred to the ICE SAC San Francisco Forensics Laboratory for further analysis.

9.   A San Francisco Police Inspector arrested KYLE at the airport on state child pornography charges arising out of the FBI referral, and took him into custody.

10.   The next day, March 16, Special Agent Analisa Nogales and I examined a mirror image of the hard drive in KYLE's laptop computer. An ICE forensic analyst informed me that the laptop contained about 329,127 image files. I previewed over 20,000 of these images using the Forensics Toolkit software (without carved items added), and have found over 529 images of child pornography and 33 child pornography videos so far. Descriptions of two typical images follow:

    a.   kiddylove7\ssddss123\1 buried head.jpg – Adult male putting his erect penis into the vagina of a pre-pubescent female child under the age of 8 years.

    b.   kiddylove7\1245640300490[1].png – Adult male putting his erect penis into the mouth of a child under the age of 8 months.

11.   As of March 18, 2010, the ICE forensic analyst informed me that of the images analyzed so far, he had found that 178 of the images generated positive hits on the ICE Known File Filter (KFF) database, meaning that they had been identified as child pornography in previous investigations. At least two of the images matched a National Center for Missing and Exploited Children (NCMEC) database for known child pornography victims.

V.   CONCLUSION

12.   Based on the aforementioned facts and information, there is probable cause to believe that on March 15, 2010, in the Northern District of California, Kenneth

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Martin KYLE did knowingly and intentionally transport in foreign commerce visual

depictions of minors engaging in sexually explicit conduct, in violation of Title 18,

United States Code, Section 2252(a)(1).

I declare under penalty of perjury under the laws of the United States that the

foregoing is true and correct to the best of my knowledge and belief.

Michael Shan, Special Agent
U.S. Immigration and Customs Enforcement
U.S. Department of Homeland Security

Subscribed and sworn to before me on:

3/19/10

Date

HON. EDWARD M. CHEN DONNA M. RYU
U.S. MAGISTRATE JUDGE

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